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Commissioner of Social Security
P. O. Box 17703
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RE: Revised Medical Criteria For Determination of Disability, Musculoskeletal System and Related Criteria, Sections 1.00B.2.a and 101.00B.2.a

Dear Commissioner:

I am writing to ask that you reconsider relatively minor provisions included in the new listings criteria for musculoskeletal impairments published in the Federal Register on November 19, 2001. I would respectfully submit that the provisions were consistent with administrative policy when these regulations were published as proposed regulations in 1993, but are inconsistent with subsequent policy statements.

I am specifically concerned with the following language, which appears in Sections 1.00B.2.a and 101.00B.2.a: "For the purposes of these criteria, consideration of the ability to perform these activities must be from a physical standpoint alone. When there is an inability to perform these activities due to a mental impairment, the criteria in 12.00ff are to be used." This language can result in inconsistent and arbitrary disability decisions. Specifically, it would appear to apply to a claimant confined to a wheelchair (and expected to remain so confined for 12 months) as the result of a somatoform disorder. The language would clearly prohibit a finding that such a claimant met the requirements of listing 1.02 and would discourage a finding of medical equivalence. The claimant would apparently be required to meet a mental impairment listing, including two part B criteria. While the claimant would likely have marked limitation of daily activities, it is not at all clear that any other part B criteria would be met. With the new and appropriate emphasis on function in determining listings level severity, it seems inconsistent to risk having a claim denied because the claimant is unable to ambulate as a result of a mental impairment rather than a physical impairment.

I hope you will revisit this issue in light of changes made in the regulations for the evaluation of mental impairments when they were published in final form on August 21, 2000. 65 Fed. Reg. 50746. At that time, you deleted language from section 5.00B of the listings, which precluded the evaluation of weight loss due to a mental impairment under the criteria for digestive system impairments. You added the following language to




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section 12.00A of the listings: "However, we may also consider mental impairments under the physical body system listings, using the concept of medical equivalence, when the mental disorder results in physical dysfunction." Again, I believe that the revisions to the mental impairment listings properly reflect a focus on function in determining listings level severity and reject a lingering notion that mental impairments are somehow less worthy of compensation than other impairments. I urge you to revise the listings for musculoskeletal impairments to reflect that they can be met or equaled by a mental impairment resulting in listings level functional limitations.

Sincerely yours,



David A. Ettinger

DAE:lh